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No. 88-2022

In the Supreme Court of the United States

OCTOBER TERM, 1989

20 ACRES OF LAND, MORE OR LESS, IN EDDY COUNTY, NEW MEXICO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether New Mexico law governs the questions whether petitioners were entitled to trial by jury and severance damages in condemnation actions initiated by the United States under Section 7 of the Reclamation Act of 1902, 43 U.S.C. 421.

2. Whether the district court abused its discretion in appointing a three-member commission, under Fed. R. Civ. P. 71A(h), to determine the amount to be awarded as just compensation in these condemnation actions.

3. Whether the district court abused its discretion in rejecting petitioners' motion to disqualify one of the appointed commissioners because of alleged bias.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1A-8A) is unreported. The pertinent orders and opinions of the district court in connection with the *Truitt* and *Howell* condemnation actions[1] are unreported: amended orders appointing commissioners, *Truitt* action, November 30, 1984, and January 30, 1985 (Pet. App. 10A-12A; Pet. App. 16A-18A); amended orders appointing commissioners, *Howell* action, November 13, 1984, and January 30,

[1] The individual petitioners (Wilma Dean Truitt and members of the Howell family) are landowners of two tracts of land condemned by the United States in separate actions. For clarity, we will refer to the separate proceedings as the "*Truitt* action" and the "*Howell* action," respectively.

1985 (Pet. App. 13A-15A; Pet. App. 19A-21A); order denying motion to reinstate jury, *Truitt* action, March 25, 1985 (Pet. App. 22A-31A); order denying motion to reinstate jury, *Howell* action, March 25, 1985 (Pet. App. 32A-41A); order adopting commissioners' recommendations, *Truitt* action, January 16, 1986 (Pet. App. 99A-102A); order adopting commissioners' recommendations, *Howell* action, January 16, 1986 (Pet. App. 103A-107A); final judgment of condemnation, *Truitt* action, February 14, 1986 (Pet. App. 110A-113A); final judgment of condemnation, *Howell* action, February 14, 1986 (Pet. App. 114A-118A).

JURISDICTION

The judgment of the court of appeals was entered on December 13, 1988. A petition for rehearing was denied on February 13, 1989 (Pet. App. 9A). The petition for a writ of certiorari was filed on May 13, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. As part of the Brantley Dam Project in Eddy County, New Mexico, the United States initiated separate condemnation actions[2] against two tracts of land in the District of New Mexico: (1) a 20-acre parcel of unimproved land owned in fee by petitioner Wilma Dean Truitt and (2) a 370.5-acre tract of improved land owned in fee

[2] Section 7 of the Reclamation Act of 1902, 43 U.S.C. 421, authorizes the Secretary of the Interior to acquire land for reclamation projects by either purchase or condemnation. Congress appropriated funds for the construction of the Brantley Dam Project by the Reclamation Project Authorization Act of 1972, Pub. L. No. 92-514, § 201, 86 Stat. 966.

by petitioner Howell family.[3] Pet. App. 43A-45A, 72A-73A.

In both the *Truitt* and *Howell* actions, the United States filed appropriate declarations of taking in the district court and deposited estimated amounts of just compensation—$21,000 for the *Truitt* tract and $428,654 for the *Howell* parcel. See 40 U.S.C. 258a. Pet. App. 110A-111A, 114A-115A. Thereafter, petitioners Truitt and the Howell family each filed a demand for jury trial, under Fed. R. Civ. P. 71A(h),[4] to determine the issue of just compensation.

The district court, under the authority of Rule 71A(h), rejected those demands, and appointed a three-member commission to determine the amount to be awarded as just compensation in both the *Truitt* and *Howell* actions. Pet. App. 10A-21A. Petitioners then filed separate motions to reinstate their demands for jury trial under Rule 71A(h). In opposing the district court's appointment of a commission, petitioners alleged, among other claims, that one panel member—Commissioner Zinn—should be disqualified because of alleged bias. Pet. App. 22A-23A, 26A-27A, 32A-33A, 36A-37A.

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[3] The commissioners described the *Howell* tract as "a farm with 370.5 acres [of] mostly grazing land, [that also include] some [90 acres of] irrigated land with shallow water rights, improved with homes and other structures" (Pet. App. 73A).

[4] Fed. R. Civ. P. 71A(h) provides in pertinent part:

> If the action involves the exercise of the power of eminent domain under the law of the United States, * * * any party may have a trial by jury of the issue of just compensation by filing a demand therefor * * *, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it.

2. Following a consolidated evidentiary hearing, the district court issued separate (but identical) orders denying petitioners' motions (Pet. App. 22A-31A, 32A-41A).[5]

a. The district court acknowledged that under the terms of Rule 71A(h), a party to a condemnation action is entitled to a jury unless the "character, location, * * * quantity of the property to be condemned, or * * * other reasons in the interest of justice" call for the appointment of a commission (Pet. App. 24A (internal quotation marks and citation omitted)). See *United States* v. *Waymire*, 202 F.2d 550 (10th Cir. 1953); *United States* v. *Theimer*, 199 F.2d 501 (10th Cir. 1952).

Turning to the situation at hand, the court stated that each condemnation action "is one of fourteen currently pending condemnation actions involving the Brantley Dam and Reservoir Project" (Pet. App. 23A). The court accepted both the government's estimate "that the project will involve 41,300 acres, with over 12,000 of that being privately owned land" and its projection "that nearly 300 separate tracts will be acquired before the project is completed" (*ibid.*).[6] The court also found that "[t]he varying interests which the United States will seek to acquire in private acreage includes fee interests, mineral estates and flowage easements," and that the "size of the tracts to be acquired * * * vary, the largest being over 3,000 acres and the smallest apparently being individual lots in an undeveloped subdivision" (*id.* at 23A-24A). Under these circumstances, given the breadth and apparent complexity of those condemnation proceedings, the court concluded that "appointment of a commission is justified in the interests of justice" (*id.* at 26A).

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[5] We give citations only to the order filed in the *Truitt* action (Pet. App. 22A-31A).

[6] The court noted that, to date, the government had obtained only 67 tracts "either through sale or condemnation" (Pet. App. 23A).

b. The district court next considered petitioners' challenges to Commissioner Zinn's qualifications, which were based on the following allegations: (1) Zinn had disregarded instructions in a previous unrelated condemnation proceeding; (2) counsel for the landowners in that proceeding were " 'terribly upset' " with Zinn's actions (Gov't C.A. Br. 14 (quoting Mar. 8, 1985, Tr. 105)); and (3) Zinn, as a speaker at a contractors' seminar, " 'was out there hustling to obtain people to use his services as an arbitrator' " (*ibid.* (quoting Mar. 8, 1985, Tr. 43)).

The court rejected each of petitioners' challenges. First, after reviewing the transcript of the previous condemnation proceeding, the court specifically found that petitioners had taken Commissioner Zinn's comments "completely out of context to imply misfeasance on [his] part", because those "remarks were proper comments on the instructions to the commission" (Pet. App. 28A). Second, the court rejected as unsupported "hearsay" petitioners' assertion of "dissatisfaction" by the landowners' counsel in that prior proceeding, since "[n]o actual evidence of either the existence of attorney dissatisfaction or the grounds for the attorney's complaints was offered" (*id.* at 29A). Third, the court rejected petitioners' challenge based on Zinn's alleged statement at the seminar since they offered no supporting evidence. Finally, the court observed that petitioners had not shown "how * * * Zinn's conduct, if it occurred at all, was improper or gave rise to a conflict of interest" (*id.* at 30A).

In sum, the district court found that petitioners' "allegations of misfeasance, bias and conflict of interest are not substantiated by a shred of admissible evidence" (Pet. App. 30A). The court accordingly concluded that such "[u]nsubstantiated allegations * * * are certainly not sufficient for the court to exercise its discretion in disqualifying" Commissioner Zinn (*ibid.*).

3. The three-member commission held separate hearings in the *Truitt* and *Howell* actions to determine the value of the properties taken by the United States. In each case, Truitt and the Howell family, respectively, contended that the government's acquisition had effected a "partial taking"—*i.e.*, that the parcel taken had been part of a larger economic unit of land, so that "the owner's compensation for that taking includes any element of value arising out of the relation of the part taken to the entire tract." *United States* v. *Miller*, 317 U.S. 369, 376 (1943). See, *e.g.*, Pet. App. 60A, 91A. Agreeing with the government, the commission found that there had not been a partial taking in either case. Accordingly, the commission determined that the fair market value of each parcel was substantially in accord with the government's deposited estimated amounts of just compensation—$11,000 for the *Truitt* tract and $397,000 for the *Howell* parcel. Pet. App. 59A-60A, 91A.[7]

a. In assessing the fair market value of the 20-acre parcel at issue in the *Truitt* action, the commission recognized that, at one time before the government's taking, the parcel had been contiguous to a cattle ranch operated by petitioner Truitt. Pet. App. 61A. The commission found that the 11,446-acre ranch had consisted of a patchwork of different land tenures: fee land; lands leased from the State of New Mexico; federal lands used under grazing permits issued by the Bureau of Land Management (BLM) under the Taylor Grazing Act, 43 U.S.C. 315 *et seq.*; 6,133

[7] In the *Truitt* action, petitioner Truitt and the United States stipulated to a $10,000 value of the mineral estate. Pet. App. 45A, 111A-112A. In the *Howell* action, the Howell family and the United States stipulated to a $63,654 value of the mineral estate. *Id.* at 73A, 116A. These stipulations account for the differences between the commission's assessments of fair market value of each parcel and the government's deposited estimated amounts of compensation.

acres of federal lands leased for grazing from the Bureau of Reclamation (BOR); and uncontrolled lands. Pet. App. 44A, 54A-56A; Gov't Exhs. 4, 6. Before the government's taking, however, the BOR lease to 3,538 of the 6,133 acres expired and was not renewed. This nonrenewal, as of the date of the government's August 1984 taking, left petitioner Truitt's 20-acre parcel isolated from the balance of her ranch lands. Pet. App. 44A, 61A; Gov't Exhs. 7, 9-A.

In these circumstances, the commission determined that the parcel's isolation precludes a finding of a partial taking. As the commission explained, "[t]o find a single economic unit, or a [use] or potential use for the 20 acres and the ranch remaining as of August 30, 1984, without including the 3538 acres is not reasonable" (Pet. App. 63A).[8] The commission accordingly concluded that to award petitioner Truitt "severance damages" would effectively compensate her for the nonrenewal of the BOR lease to the 3,538 acres (*id.* at 63A-64A). Instead, the commission found that "the highest and best use of the [20-acre parcel] is for development as rural recreational homesites" and that the parcel's fair market value is $11,000 (*id.* at 59A-60A).

b. In assessing the fair market value of the 370.5-acre parcel at issue in the *Howell* action, the commission recognized that, at one time before the government's taking, the parcel (consisting of a farm and homes) had been contiguous to other non-fee lands used by the Howell family—1,740 acres of federal lands leased from the BOR and uncontrolled lands. After the taking, however, the contiguous BOR lease expired and had not been renewed. Pet.

[8] The commission found little probative value in petitioner Truitt's evidence concerning her use of the 20-acre parcel in connection with the balance of the ranch, because that evidence involved operation of the ranch *before* the parcel had become isolated. Pet. App. 59A-64A.

App. 81A-82A; Howell Exhs. I, G. The commission also found that the Howell family used a nearby second group of properties for ranching. These properties, located eight to fifteen miles west of the 370.5 acre parcel, consisted of an amalgam of federal lands, state lands, fee lands, and uncontrolled lands. Pet. App. 74A-75A; Gov't Exh. 5.

In resolving the partial taking claim, the commission considered "whether or not the two separated parts of the Howell family ranching operation were in fact interdependent so as to form an economic unit of such a nature that the loss of the part taken * * * caused a diminution of the fair market value of the land which was not taken" (Pet. App. 92A). The commission noted that the Howell family "used the two parts of the ranch to provide grazing rotation and to separate calf from mother at weaning time," but also made clear that "[t]hese appear to be ranching practices that are merely matters of convenience that could have been achieved through the use of any other grazing land" (*ibid.*). The commission found "no unique relationship between the two tracts," and accordingly concluded that "[t]he two units never became one economic unit in the sense of being functionally damaged when severed" (*id.* at 92A, 93A).

Apart from declining to award severance damages based on the absence of unity between the two tracts, the commission determined that the alleged damages sought by the Howell family resulted substantially from the nonrenewal of the BOR lease—an event that occurred after the government's taking. Pet. App. 93A.[9] Instead of awarding

[9] The commission also rejected the Howell family's request for damages for other items, such as "future water sale" and "the sales of caliche gravel for forty years" (Pet. App. 94A). It found that such claims were "speculative" and accordingly held them "unacceptable under the instructions of the Court," which effectively "require rejection of speculative elements of value" (*ibid.*).

severance damages based on a partial taking, the commission concluded that "[t]here has been a complete taking," and that "the highest and best use of the property taken is farming" (*id.* at 91A). It found the parcel's fair market value to be $397,000 (*ibid.*).

4. The district court approved and adopted the commission's report in both the *Truitt* and *Howell* actions (Pet. App. 99A-102A, 103A-107A).

a. In the *Truitt* action, the district court found that the commission's findings with respect to the claim for severance damages "are supported by substantial evidence and are not clearly erroneous" (Pet. App. 100A). It thus agreed with the commission's determination not to award such damages where the record shows that petitioner Truitt's "ranch[,] including the 20 acres condemned[,] was not an economic unit for purposes of compensation" (*id.* at 101A). And, in response to petitioner's renewed challenge to the commission's alleged bias, the court reiterated that "[n]o substantial claim has been made which would support the disqualification of any of the Commissioners from hearing this case" (*id.* at 101A-102A).

b. In the *Howell* action, the district court also found that the commission's findings with respect to the claim for severance damages "are supported by substantial evidence and are not clearly erroneous" (Pet. App. 105A). The court noted that "[i]t is undisputed that the land taken * * * and [the Howell family's] remaining land were used as an integrated ranch" (*id.* at 104A). It stressed, however, that "more is needed to show that a partial taking has occurred. A showing must be made that the tract taken and the tract remaining are so dependent on each other that the taking necessarily depreciates the value of the part remaining" (*ibid.*). The court thus agreed with the commission's

determination not to award severance damages where "there is substantial evidence to support the Commissioners' findings that the remaining part of [the Howell family's] ranch was not functionally damaged when severed from the portion taken" (*id.* at 105A).[10]

5. After consolidating the *Truitt* and *Howell* actions, the court of appeals affirmed (Pet. App. 1A-8A). In response to petitioners' contention that they were entitled to a jury trial, the court of appeals cited the established principle " 'that there is no constitutional right to a trial by jury in eminent domain proceedings' " (*id.* at 3A (quoting *United States* v. *Reynolds*, 397 U.S. 14, 18 (1970)), and recognized that, under Fed. R. Civ. P. 71A(h), the district court exercises discretion in ruling on demands for jury trial in condemnation actions. Pet. App. 4A-5A. In the circumstances presented, where the *Truitt* and *Howell* actions were only two of numerous other Brantley Dam cases pending, and where many of these cases raise complex valuation questions, the court of appeals held that the district court had exercised its sound discretion in appointing a commission under Rule 71A(h). Pet. App. 5A.

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[10] The court also rejected the Howell family's challenge to the method of determining fair market value used by the government's expert witness and adopted by the commission. Pet. App. 105A-106A.

Finally, the court rejected the Howell family's renewed challenge to the commission's alleged bias for the same reasons it rejected petitioner Truitt's identical claim. Pet. App. 106A-107A.

After denying post-trial motions in both actions (Pet. App. 108A, 109A), the district court entered separate final judgments awarding petitioner Truitt a total of $21,000 in just compensation (*id.* at 110A-112A) and the Howell family at total of $460,654 (*id.* at 114A-118A). Since the United States had not deposited a sufficient amount in the *Howell* action, the district court ordered the government to deposit an additional $32,000 (plus six percent interest from the date of taking) into the court registry for payment to the landowner (*id.* at 117A).

The court of appeals also rejected petitioners' claim that the district court erred in refusing to disqualify Commissioner Zinn. It found that petitioners "made only vague allegations concerning bias on the part of Commissioner Zinn" (Pet. App. 6A), and that the district court accordingly had not abused its discretion in allowing him to participate.

Turning to petitioners' contentions that the United States had effected partial takings and should have paid severance damages, the court of appeals agreed with the district court that neither petitioner had made the requisite showing, namely, that the "entire property constituted an 'integrated use' " and that there was " 'unity of ownership' of the land taken and the remaining parcels" (Pet. App. 7A-8A). The court of appeals also noted that petitioners each "failed to prove any loss in market value of the parcel remaining after the taking" (*id.* at 8A).[11]

ARGUMENT

The decision of the court of appeals correctly applies established legal principles to the particular facts presented and does not conflict with any decision of this Court or of any other court of appeals. Accordingly, no further review is warranted.

1. Petitioners principally contend (Pet. 27-34) that New Mexico law, not federal law, governs the questions whether they were entitled to trial by jury and severance

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[11] Finally, the court of appeals rejected petitioners' challenges to a number of the district court's instructions to the commission, concluding that petitioners "failed to establish that any of the alleged errors * * * prejudiced them" (Pet. App. 8A). In any event, the court held that "[t]he challenged instructions, taken facially as a whole, do not constitute reversible error" (*id.* at 8A-9A). See Gov't C.A. Br. 34-40.

damages in these condemnation actions. The federal government's obligation to pay just compensation for takings of private property derives from the Fifth Amendment. As this Court has recognized, "[i]f there is a taking, the claim is founded upon the Constitution." *United States* v. *Causby*, 328 U.S. 256, 267 (1946) (internal quotation marks and citation omitted)). Consequently, it is well established that federal law governs "questions of substantive right" in federal condemnation actions. *United States* v. *Miller*, 317 U.S. 369, 380 (1943); see, *e.g.*, 40 U.S.C. 258a.[12]

Contrary to petitioners' assertion, federal law governs "the measure of compensation" (*United States* v. *Miller*, 317 U.S. at 380), which includes the question of severance damages (*id.* at 375-376).[13] And Fed. R. Civ. P. 71A(a) makes clear that "[t]he Rules of Civil Procedure for the United States District Courts govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in [Rule 71A]." Thus, since Congress has affirmatively chosen not "to make state laws applicable," *United States* v. *93.970 Acres*, 360 U.S. 328, 333 (1959), Fed. R. Civ. P. 71A(h) plainly governs a landowner's right to jury trial on

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[12] See also *United States* v. *93.970 Acres*, 360 U.S. 328, 332-333 (1959) ("Condemnation involves essential governmental functions. * * * We have often held that where essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make state laws applicable.").

[13] Petitioners may not rely on the lands leased from the BOR as supplying the requisite "unity of ownership" with respect to each of their parcels. As Section 3 of the Taylor Grazing Act, 43 U.S.C. 315b, makes clear, "the issuance of a [grazing] permit * * * shall not create any right, title, interest, or estate in or to the lands." Cf. *United States* v. *Fuller*, 409 U.S. 488, 490-494 (1973).

the issue of just compensation in a federal condemnation action. See note 4, *supra*.

Petitioners' assertion (Pet. 28-30) that New Mexico law applies in these condemnation acts stems from a misreading of Section 8 of the Reclamation Act of 1902, 43 U.S.C. 383,[14] and this Court's decision in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950). By its terms, Section 8 requires only that the United States, in connection with a reclamation project, recognize water and riparian rights created by state law, and compensate for any such rights taken. But Section 8 does not suggest that state law displaces federal law (including Fed. R. Civ. P. 71A(h)) as the substantive and procedural law governing condemnation actions—particularly where, as here, the United States did not take state-created water rights.[15]

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[14] Section 8 of the Reclamation Act of 1902, 43 U.S.C. 383, provides:

> Nothing in this Act shall be construed as affecting or intending to affect or to any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof.

[15] Contrary to petitioners' suggestions (Pet. 20, 23, 37), the government did not take any water rights in the *Truitt* action. As the district court made clear, "[n]either party presented testimony which valued any water rights associated with the twenty acres" (Pet. App. 101A). And in the *Howell* action, the United States did not take water rights as such; it took fee simple title to the 370.5-acre tract, which included 90 acres of adjudicated shallow water rights (see *id.* at 72A-73A).

In *Gerlach Live Stock Co.*, the Court therefore turned to California state law "to determine the rights and liabilities of landowner and appropriator" (339 U.S. at 742), specifically, whether state law recognized a "right of inundation" (*id.* at 754). Having concluded that California recognized that riparian right (*id.* at 742-755), the Court held that the United States must compensate those whose right to inundation had been taken in the federal government's construction of the Central Valley Project in California (*id.* at 754-755). See *California* v. *United States*, 438 U.S. 645, 669 n.21 (1978) ("Congress in the 1902 Act intended to follow state law as to appropriation of water and condemnation of water rights."). The decision in *Gerlach Live Stock Co.* thus was a particular application, in the context of riparian rights, of the general principle that, while federal law governs federal condemnation proceedings, state law ordinarily defines the particular property rights being taken.

2. Petitioners also contend (Pet. 34-39) that the district court erred in appointing a three-member commission, under Fed. R. Civ. P. 71A(h), to determine the amount to be awarded as just compensation in these condemnation actions. As Rule 71A(h) makes plain, the district court, "in its discretion," determines whether a jury or a commission should decide in the first instance the issue of just compensation. See note 4, *supra*; *United States* v. *Delaware, Lackawanna & W.R.R.*, 264 F.2d 112, 115 (3d Cir.), cert. denied, 361 U.S. 819 (1959). In both the *Truitt* and *Howell* actions, the district court, in ultimately concluding that the appointment of a commission would be "in the interests of justice" (Pet. App. 26A, 36A), expressly considered the number of Brantley Dam cases pending, the potential for additional cases to be filed, the vast acreage to be acquired for the project, and the diversity of interests to be acquired (*id.* at 23A-26A,

33A-36A).[16] These are the very factors specified in Rule 71A(h)—"the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice" (Fed. R. Civ. P. 71A(h)). The district court therefore properly exercised its discretion in appointing a commission.

3. Finally, petitioners renew their contention (Pet. 39-42) that the district court should have disqualified Commissioner Zinn because of alleged bias. The decision to disqualify a commissioner appointed under Fed. R. Civ. P. 71A(h) is "a matter for the exercise of discretion by the district judge, unless actual bias has been demonstrated beyond reasonable possibility of disagreement." *United States* v. *Certain Parcels of Land*, 384 F.2d 677, 681 (4th Cir. 1967). In this case, petitioners made "only vague allegations concerning bias on the part of Commissioner Zinn" (Pet. App. 6A). And, as the district court specifically found, petitioners offered no admissible or credible evidence showing any bias on his part. See *id.* at 26A-30A, 36A-40A; p. 5, *supra*. In these circumstances, both the district court and the court of appeals correctly rejected petitioners' unfounded challenge.[17]

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[16] Petitioners err in asserting (Pet. 35-36) that the federal government's witness (presumably referring to Realty Officer Chapman) testified that there would be no more than five condemnation actions filed in the district court in connection with the Brantley Dam Project. Chapman testified that there were some six to twelve of the more complex Brantley Dam cases then pending. See Mar. 8, 1985, Tr. 80.

[17] Petitioners err in asserting that the Assistant United States Attorney representing the government in this case "present[ed] Zinn's case before the [district court at the evidentiary hearing]" (Pet. 39; see *id.* at 41). The AUSA's arguing in opposition to petitioners' motion to disqualify scarcely resembles his representing Commissioner Zinn's individual legal interests.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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